No. 8662

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

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MARGARET D. KLEINSCHMIDT, as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased,

Appellant,

vs.

ERNEST U. SCHROETER, as Trustee in Bankruptcy of the Estate of B. F. Baum, a Bankrupt,

Appellee.

BRIEF FOR APPELLANT.

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Appellee.

BRIEF FOR APPELLANT.

STATEMENT AS TO JURISDICTION.

This is an appeal from a final judgment and decree of the United States District Court for the Southern District of California, Central Division (Tr. pp. 53-57), against the appellant in the amount of $10,880.

This equity suit was commenced under sections 70 and 70(e) of the Bankruptcy Act to set aside and void transfers of property alleged to consist of the interest of the bankrupt Baum in and to certain mining properties which were located in said Southern District, to recover the value of the property so transferred (Tr. pp. 5, 6) and to com-

pel an accounting by the defendant of all proceeds derived from the alleged sale of the bankrupt's interest in the property. The District Court had original jurisdiction of the suit under section 70(e) of the Bankruptcy Act (U.S.C. 11:110(e)). This section provides as follows:

> "The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as defined in this title,[1] and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

This court has jurisdiction upon appeal to review the District Court's decree under section 128 of the Judicial Code (U.S.C. 28:225):

> "(a) *Review of final decisions.* The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions—
>
> First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345[2] of this title."

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1. Section 1 of the Bankruptcy Act (U.S.C. 11:1) defines a "court of bankruptcy": "* * * 'courts of bankruptcy' shall include *the district courts of the United States*, the Supreme Court of the District of Columbia, and the United States courts of Alaska, Hawaii, and Porto Rico; * * *."
2. U.S.C. 28:345 is not involved in this case.

STATEMENT OF THE CASE.

This is a suit brought by the trustee in bankruptcy of B. F. Baum to recover for an alleged fraudulent conveyance by Baum of an interest in a mine immediately prior to his adjudication as a bankrupt. The bill alleges that at the time and immediately prior to his adjudication, Baum was the owner of an undivided one-half interest in the Camp Rock Placer Mine. He and Walter G. Kleinschmidt, it states, conspired to defraud Baum's creditors. As a part of the conspiracy, Baum conveyed to Kleinschmidt his interest in the mine which Kleinschmidt agreed to hold for Baum until Baum's discharge in bankruptcy. It further alleges that after Baum's discharge in bankruptcy, Kleinschmidt sold the mine and received the proceeds therefrom, half of which proceeds plaintiff claims belongs to Baum's creditors.

The suit was commenced by Baum's trustee against Baum and the administratrix of Kleinschmidt's estate. The district court rendered its judgment and decree against both defendants for $10,880, which sum is equal to one half of the proceeds derived from the sale of the mine after the deduction of certain expenses. Appellant here, Margaret D. Kleinschmidt, as administratrix of the estate of Walter G. Kleinschmidt, appealed. Baum declined to appeal (Tr. p. 165) and the district court made an order of severance.

Appellant contends that the judgment and decree of the district court should be reversed by reason of the insufficiency of the evidence to support the findings necessary to establish a fraudulent conveyance, in the following respects:

1. Baum never had a half interest in the mine;

2. He forfeited the interest which he had prior to his adjudication as a bankrupt;

3. The conveyances which he made conveyed only the bare legal title to Kleinschmidt and were merely for the purpose of clearing the record title;

4. The compensation which Kleinschmidt agreed to pay Baum was for services rendered Kleinschmidt after Baum's adjudication in bankruptcy and to which plaintiff has no right; and

5. There is no proof of either fraud or conspiracy nor of facts from which fraud can be inferred.

The questions thus involved in this appeal are raised by the appellant's motion to dismiss the cause against the appellant in her representative capacity, to the denial of which motion the appellant made timely exception (Tr. p. 88), by the appellant's motion for a judgment and decree in her favor (Tr. p. 163), and by the assignment of errors (Tr. pp. 170-185).

THE FACTS.

On April 16, 1931, J. W. Sullivan contracted to purchase mining property known as Camp Rock Placer Mine for $20,000 payable in monthly installments of $1,000. The contract provided for forfeiture by the purchaser of his interest in the event he defaulted in any of the payments (Tr. pp. 90-93).

On April 24, 1931, Sullivan agreed with defendant B. F. Baum and Walter G. Kleinschmidt, deceased, that the

three should share in the cost of purchasing and operating the mine and should divide the profits from the operation or sale of it equally among them after the payment of 20 per cent of such profits to one Murray and seven others, i. e., each of the three were to advance at least $333.33 (one third of the purchase money installments) on or before the 15th of each month and were each to receive 26⅔ per cent of the profits. The contract provided (Tr. p. 85):

> "*In the event that any of the said parties fail or refuse to supply his proportion of the required funds,* when and as said funds are required as herein set forth, time being the essence of this requirement, *then, and in that event, the other parties hereto shall have the right to pay such sums as are required, and in that event, any and all interests owned by said defaulting party in and to said agreement for sale of mining property, or in or to said property, shall be deemed forfeited;* provided, however, that any and all moneys paid under and by virtue of said agreement shall be repaid to said defaulting party at the rate of five (5) per cent. of any and all profits produced by said property, after said property has been fully paid for, and good and sufficient deed conveying said property shall have been executed and delivered to the other two parties; or in the event of sale of said Camp Rock Placer Mine, said defaulting party shall be paid at the rate of twenty six and two-thirds (26⅔) per cent. of the payment made under said sale until he has received an amount equal to the amount of money which he has supplied under this agreement" (italics ours).

Sullivan delivered to Baum and Kleinschmidt each an assignment (Tr. pp. 62-64, 96-98) of 33⅓ per cent of his

(Sullivan's) interest as purchaser under the contract to purchase the mine, dated April 16, 1931.

Up to and including the payment due on August 15, 1931, the fifth payment, each of the three advanced his share on the purchase installment. On September 15, 1931, Baum failed to make any payment and thus defaulted under the agreement with Kleinschmidt and Sullivan (Tr. pp. 99, 133-134, 147, 149, 152). Baum made five payments of $333.33 each, or a total of $1,666.65, toward the purchase price of the mine (Tr. p. 149). He contributed nothing after August 15, 1931, and the payments he had contracted to make were thereafter made by Kleinschmidt.

On September 23, 1931, Baum executed an instrument, presented to him by Kleinschmidt, entitled "Assignment", and which provided, after describing the Camp Rock Placer Mine, that:

> "* * * I, B. F. Baum, do hereby assign, transfer and set over unto Walter G. Kleinschmidt, twenty-six and two-thirds (26⅔%) per cent. of all of the right, title and interest of the purchaser, as set forth herein" (Tr. pp. 94-96).

The instrument is patterned after the assignment delivered to Baum and Kleinschmidt by Sullivan. It was not prepared by the attorney who was at the time acting for Kleinschmidt in matters regarding the mine (Tr. pp. 134, 137-138).

On November 6, 1931, Baum was adjudicated a bankrupt (Tr. p. 59). The schedules filed by Baum did not show that he owned or claimed any interest in the Camp Rock Placer Mine, a right to any of the profits to be

derived from the operation or sale of the mine or any rights to receive from any profits from the sale of the mine any reimbursement for the money he had contributed to the purchase of the mine.

On December 15, 1931, Sullivan failed to pay his installment of the purchase price of the mine and he thus also defaulted under his contract with Kleinschmidt and Baum (Tr. p. 133). He admitted in a letter to Kleinschmidt, dated December 14, 1931 (Tr. p. 101) that he had forfeited his interest in the mine and had only a right of reimbursement for money advanced by him. All payments on the purchase price of the mine were thereafter made by Kleinschmidt and continued at the rate of $1,000 a month until November 1, 1933, when the final installment was paid (Tr. pp. 132-133).

On April 7, 1932, Baum acknowledged the execution of a quitclaim deed to Kleinschmidt, dated February 29, 1932, of all his right, title and interest in and to the mine (Tr. pp. 65-67). This deed was recorded on July 30, 1932, and was prepared by Kleinschmidt's attorney, who testified he obtained it from Baum to clear title to the property, as he felt the instrument executed on September 23, 1931, by Baum "assigning" a 26⅔ per cent interest, was ambiguous (Tr. p. 134). Baum was discharged from bankruptcy on April 4, 1932 (Tr. 102).

At the time the parties first became interested in the mine, in April, 1931, Kleinschmidt was auditor for the Southern California Telephone Company and resided in Los Angeles, where the above described events took place. In May, 1931, he became treasurer of The Pacific Tele-

phone and Telegraph Company in San Francisco, near where he thereafter resided (Tr. pp. 136-137, 162). When Kleinschmidt was transferred to San Francisco, he asked Baum to look after his interest (Tr. p. 151).

As early as July, 1931, Baum attempted to obtain purchasers of the property (Tr. p. 152). After Baum had defaulted in his contract with Kleinschmidt and Sullivan, he continued with his efforts to sell the mine. In September, 1931, he told Kleinschmidt he wanted $5,000 cash, if he found a cash buyer. Kleinschmidt said he would make a satisfactory agreement but no definite agreement was then made (Tr. pp. 156-157). In November, 1931, Kleinschmidt told Baum the mine would have to be sold or it would be lost (Tr. p. 160). At this time Kleinschmidt was paying 66⅔ per cent of the $1,000 monthly installments, and, beginning with December, he alone paid the whole of each installment of $1,000.

In the spring of 1932, Baum obtained two purchasers, Llewellyn and Evans, who agreed to buy the mine for $50,000 (Tr. pp. 136, 150-153). On April 18, 1932, Kleinschmidt contracted to sell the mine to these purchasers for $50,000 (Tr. pp. 140-146). Shortly thereafter, Evans dropped out, and a new contract was made to sell the mine to Llewellyn alone (Tr. pp. 102-107). This contract provided for payment in monthly installments, and was eventually fulfilled by Llewellyn.

On November 15, 1932, Kleinschmidt executed and delivered to Baum an instrument by which he granted and assigned to B. F. Baum 50 per cent "of any and all amounts of money received by me from the sale or lease

of the Camp Rock Placer Mine'' after certain deductions (Tr. pp. 68-69). This instrument was recorded on December 15, 1932. The amount to be paid to Baum pursuant to this instrument the court found to be one half the sum of $21,760, or the sum of $10,880 (Tr. p. 45). Seven thousand dollars was paid to Baum by Kleinschmidt prior to the bringing of this action (Tr. p. 155).

SPECIFICATION OF ASSIGNMENT OF ERRORS RELIED UPON.

The appellant relies upon the following Assignment of Errors:

IV (b) ..... Tr. p. 173
IV (d) ..... Tr. p. 176
IV (e) ..... Tr. pp. 177-179
IV (f) ..... Tr. pp. 179-181
IX ..... Tr. p. 184
X ..... Tr. p. 184

SUMMARY OF THE ARGUMENT.

I. The court's findings that Baum conveyed an interest in the Camp Rock Placer Mine to Kleinschmidt are not supported by the evidence; he forfeited his interest in the mine by failing to make a payment due on September 15, 1931, prior to the making of any conveyance by him to Kleinschmidt and prior to his adjudication in bankruptcy.

(a) The court in Findings I and II found that Baum at the time of his adjudication in bankruptcy

was the owner of an interest in the Camp Rock Mine. These findings are erroneous as he had forfeited his interest in the mine by his failure to pay the installment due on September 15, 1931.

(b) Baum never conveyed any interest in the mine to Kleinschmidt; consequently there was no fraudulent conveyance, the assignment and the quitclaim deed being merely evidence of the forfeiture and an attempt to clear the record title to the mine.

II. The only right remaining to Baum after his default and forfeiture of September 15, 1931, was the right to be reimbursed upon certain conditions for the money he had advanced and his trustee in bankruptcy can recover no more than such a sum, to wit, $2,200.

III. The court's findings that Kleinschmidt delivered to Baum the instrument dated November 15, 1932, by which he agreed to pay Baum $10,880 out of the proceeds of the sale of Camp Rock Placer Mine, pursuant to an agreement to defraud Baum's creditors and to return to Baum his interest in the mine, are not supported by the evidence; the evidence showed this instrument was delivered in consideration of services rendered by Baum after his adjudication in bankruptcy.

(a) The court's finding that the instrument of November 15, 1932, was delivered pursuant to an agreement to return to Baum his interest in the mine is contradicted by the only evidence on the point.

(b) There is not only no evidence of fraud in this case but the facts shown by the evidence are con-

sistent only with a course of lawful, fair and honest dealing.

(c) Baum's trustee in bankruptcy is not entitled to Baum's earnings after his adjudication in bankruptcy nor the compensation Kleinschmidt agreed to pay Baum for services rendered after Baum's adjudication in bankruptcy.

ARGUMENT OF THE CASE.

I.

THE COURT'S FINDINGS THAT BAUM CONVEYED AN INTEREST IN THE CAMP ROCK PLACER MINE TO KLEINSCHMIDT ARE NOT SUPPORTED BY THE EVIDENCE; HE FORFEITED HIS INTEREST IN THE MINE BY FAILING TO MAKE A PAYMENT DUE ON SEPTEMBER 15, 1931, PRIOR TO THE MAKING OF ANY CONVEYANCE BY HIM TO KLEINSCHMIDT AND PRIOR TO HIS ADJUDICATION IN BANKRUPTCY.

ASSIGNMENT OF ERRORS.

IV. The District Court erred in the making of the following findings of fact which were adopted by it in the making of its decree and judgment, to wit:

(b) "That at the time of the making of said schedules and the filing thereof on the 6th day of November, 1931, at the time of the making of the decree of adjudication in bankruptcy as to said Benjamin F. Baum, said Benjamin F. Baum was the owner of an interest in a certain group of mining claims with water rights appertaining thereto, commonly known as the Camp Rock Mining property and also as Camp Rock Mines, situate in the Belleville Mining District in the County of San Bernardino, State of California."

(d) "The court finds that at the time of the adjudication of Benjamin F. Baum as a bankrupt on the 6th day of November, 1931, Benjamin F. Baum scheduled debts in excess of $90,000.00, and that in contemplation of said bankruptcy proceedings, which were voluntary on the part of Benjamin F. Baum, he did, on the 12 day of September, 1931, and less than sixty days prior to the filing of his bankruptcy on November 6, 1931, and while he was indebted to creditors in a sum in excess of $90,000.00, he, the said Benjamin F. Baum, entered into an agreement with Walter Granger Kleinschmidt, who was then a person jointly interested with him in the said mining property hereinbefore described, the Camp Rock Mining property.

That at said time it was agreed by and between the said Benjamin F. Baum and said Walter Granger Kleinschmidt that Benjamin F. Baum should assign his interest in and to said mining property and his, Benjamin F. Baum's, contractual rights therein and thereto, and convey the same to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt agreed that he would hold the same as the property of Benjamin F. Baum, to and until such time as Benjamin F. Baum should be free of entanglements and obligations of his, the said Benjamin F. Baum's, creditors. That said Walter Granger Kleinschmidt then and there agreed to reconvey said property at a date in the future and at a time when said Benjamin F. Baum should request the same, and at a time when and after Benjamin F. Baum should be free of and from the obligations of his, Benjamin F. Baum's, creditors. That on September 12, 1931, Benjamin F. Baum made and delivered to Walter Granger Kleinschmidt an instrument

purporting to assign to Kleinschmidt his interest in the mining property hereinbefore described."

IX. The District Court erred in denying the motion of this defendant to dismiss the bill of complaint as against her on the ground that the same was not supported and was contrary to the evidence adduced herein, to the denial of which motion timely exception was noted by said defendant.

(a) The court in Findings I and II found that Baum at the time of his adjudication in bankruptcy was the owner of an interest in the Camp Rock Mine. These findings are erroneous as he had forfeited his interest in the mine by his failure to pay the installment due on September 15, 1931.

The gravamen of the plaintiff's action is that prior to Baum's adjudication in bankruptcy, he was the owner of an undivided one-half interest in and to the Camp Rock Placer Mine and conveyed this interest to Kleinschmidt in contemplation of his bankruptcy, and that Kleinschmidt, subsequent to the discharge of the bankrupt, reconveyed the interest to Baum (Tr. pp. 8, 9, 10, 11-12).

The prayer of the complaint (Tr. p. 16) is for the recovery of $25,000, which is alleged to be the value of the half interest so conveyed by Baum in defraud of his creditors (Tr. p. 13). Consequently, to recover in this case plaintiff must prove first, that Baum had an interest in the Camp Rock Placer Mine, second, that he conveyed this interest to Kleinschmidt, and third, that this was done in defraud of Baum's creditors prior to his adjudication in bankruptcy. The trial court in its findings of fact I and II specifically found that at the time of the adjudication in bankruptcy Baum was the owner of an interest

in the Camp Rock Placer Mine and that Baum prior to the adjudication conveyed his interest in the mine to Kleinschmidt and that Kleinschmidt agreed to reconvey the interest when Baum should be freed of the obligation of Baum's creditors (Tr. pp. 37, 38, 39). We contend that these findings are contrary to the undisputed evidence in this case.

We will show that (1) Baum had no interest in the mine subsequent to the 15th of September, 1931, (2) he never at any time conveyed an interest in the mine to Kleinschmidt, and (3) the trustee in bankruptcy's right, if any, is only one to recover the money which Baum contributed to the joint adventure.

By the agreement of April 16, 1931 (Tr. pp. 90-93) Sullivan contracted to purchase the mine. Eight days later Sullivan entered into an agreement with Baum and Kleinschmidt whereby the three agreed to purchase the mine jointly. Sullivan's agreement provided (Tr. p. 91) that he, as purchaser, would have to pay the vendors $1,000 per month, and in the event of the failure to pay this sum the vendors "and each of them shall be released from all obligation, both at law and in equity, to convey said property; and, in such event, the purchaser shall forfeit all right to said property, and all payments theretofore made by him shall be forfeited to the said vendors" (Tr. p. 92). It was only natural, therefore, for the three parties, when they entered into the agreement of the 24th of April, 1931, to make some provision in the event one or two of the parties defaulted in his or their payments to be made on the mine, so that the parties who were not in default could make the payments of the defaulting party

and thus protect the interest of the nondefaulting party or parties in the mine. Consequently, the agreement provided in part as follows (Tr. pp. 84-85):

> "It is Further Understood and Agreed that the said Walter G. Kleinschmidt, Benjamin F. Baum and J. W. Sullivan each agree to supply one-third (⅓) of the necessary funds required to apply on the purchase price, or to operate the property, so that the funds so supplied from said Walter G. Kleinschmidt, Benjamin F. Baum and J. W. Sullivan, in equal amounts, will equal one hundred (100) per cent. of the funds so required. *In the event that any of the said parties fail or refuse to supply his proportion of the required funds,* when and as said funds are required as herein set forth, time being the essence of this requirement, *then, and in that event, the other parties hereto shall have the right to pay such sums as are required, and in that event, any and all interests owned by said defaulting party in and to said agreement for sale of mining property, or in or to said property, shall be deemed forfeited;* provided, however, that any and all moneys paid under and by virtue of said agreement shall be repaid to said defaulting party at the rate of five (5) per cent. of any and all profits produced by said property, after said property has been fully paid for, and good and sufficient deed conveying said property shall have been executed and delivered to the other two parties; or in the event of sale of said Camp Rock Placer Mine, said defaulting party shall be paid at the rate of twenty six and two-thirds (26⅔) per cent. of the payment made under said sale until he has received an amount equal to the amount of money which he has supplied under this agreement" (italics ours).

As above stated, the "necessary funds required to apply on the purchase price" were monthly payments of $1,000 specified in Sullivan's contract, the agreement of April 16, 1931. Therefore, each of the three, Sullivan, Baum and Kleinschmidt, were required to advance at least $333.33 each month, or in the event of the failure of any one of them to do so, his interest would be forfeited in the event his share was advanced by the others.

The uncontradicted evidence at the trial showed that Baum made a total of five payments of $333.33, pursuant to the agreement of April 24, 1931, and no more. These were the payments for the months of April, May, June, July and August, 1931. He made no payments after August 15, 1931, and consequently was in default upon the 16th of September, 1931, for his failure to make the payment due on the 15th of that month (Tr. pp. 99, 133-134, 147, 149, 152).

Beginning with the September 15th payment Kleinschmidt, in addition to paying his own share, made the payments which Baum had agreed to make.

The forfeiture provision is clear and unambiguous and is in form like those not infrequently found in agreements of this type between joint adventurers. That a provision for a forfeiture of this type is valid and binding in the State of California upon the defaulting party was held in *Martin v. Burris,* 57 Cal. App. 739. The pertinent portion of the agreement between the joint adventurers in that case provided as follows (p. 743):

> " 'That in the event of either of the parties hereto failing to make any payment upon any option or agreement to purchase at the time and place specified

> therefor in said agreements or any agreement hereafter to be made in reference thereto, in that event the other party is hereby authorized to make such payment and shall succeed to all the right, title and interest of every kind and character of the delinquent party of in and to the properties named in any of said options which shall have become delinquent by reason of the nonpayment of any installments thereon.' ''

The evidence in the case showed that the defendant failed to pay any part of the installments on one of the mines known as the Red Rock claim. The court in holding that the defendant forfeited his interest in that mine said (p. 743):

> "The defendant failed to pay any part of the deferred installments which became due on the Red Rock option and the plaintiff paid $1,000 on the first deferred installment and made a new arrangement with the owners for subsequent payments. The evidence seems to justify the conclusion that by such failure the defendant forfeited his interest in the Red Rock claim."

Consequently, we maintain that Baum's interest in the mine itself ceased to exist on his failure to make his payment due on September 15, 1931.

If after that date he had no interest in the mine itself, it is clear that (a) he could not have conveyed any interest in the mine to Kleinschmidt for a person cannot convey that which he does not own, nor (b) could his trustee in bankruptcy have acquired any interest in the property itself either by virtue of a title existing in Baum on the date of his adjudication in bankruptcy, or as a

result of his right under the Bankruptcy Act to set aside conveyances which the bankrupt had made with an intent to hinder, delay or defraud his creditors or to recover the value of the interest which the bankrupt had fraudulently conveyed.

The trustee in bankruptcy when the bankrupt has forfeited his interest in property prior to the adjudication of bankruptcy has no greater interest in it than the bankrupt had, for under such circumstances he stands in the bankrupt's shoes.

Lindeke v. Associates Realty Co. (8th C.C.A.), 146 Fed. 630, was a suit by the lessor of real property against the lessee's trustee in bankruptcy to enforce the lessor's right to forfeit the lease for the breach, prior to the bankruptcy, of the lessee's covenant to build a building on the demised premises. The court held that the forfeiture being valid the lessee lost his interest in the premises and the lessee's trustee in bankruptcy therefore acquired no interest in the premises by virtue of the bankruptcy proceedings. It said (p. 639):

> "Under such circumstances, the trustees stand simply in the shoes of the bankrupt at the time they succeeded to the estate. See York Manufacturing Company v. Cassell et al., 201 U.S. 344, 26 Sup. Ct. 481, 50 L. Ed. 782; Thompson v. Fairbanks, 196 U.S. 516, 25 Sup. Ct. 306, 49 L. Ed. 577; Yeatman v. Savings Institution, 95 U.S. 764, 24 L. Ed. 589; Hewit v. Berlin Machine Works, 194 U.S. 296, 24 Sup. Ct. 690, 48 L. Ed. 986."

Odell v. H. Batterman Co. (2d C.C.A.) 223 Fed. 292, considered the effect of a forfeiture in a lease which pro-

vided that in the event of any default under the covenants of the lease the landlord might reenter and remove all persons therefrom. The court in relying upon *Lindeke v. Associates Realty Co.*, supra, said (p. 296):

> "A trustee in bankruptcy is bound by all forfeiture clauses, and the bankruptcy court gives effect to them."

The reason for Baum's default is readily understood when the evidence regarding the circumstances is examined. During the middle of September Baum was heavily indebted, the bank had stopped payment on his checks, and on the 6th of November, 1931, less than three months after the default, he was adjudicated a bankrupt.

In considering the validity of the forfeiture clause in this agreement it must be remembered that the effect of the forfeiture as to Baum's interest in the mine is the same as the effect of the forfeiture as to Sullivan's interest in the mine. Sullivan defaulted in November, 1931 (Tr. p. 99) and on December 13, 1931, he wrote to Kleinschmidt (Tr. p. 101):

> "This is to certify that I am unable to meet my prorata payment in re Camp Rock Mines which is due on the 16th instant and that this is your authorization to make said payment in my behalf and in my stead and that upon you making said payment in my behalf I hereby authorize and acknowledge that our agreement between ourselves regarding said failure on my part to meet my quota when due shall automatically grant you a transfer of all my interest in said property subject to reimbursing me in the event of a sale of said mine as per the terms of our said agreement.
>
> Very truly yours,
>
> (Signed) J W Sullivan".

There has never been any question in this case but that Sullivan forfeited his interest in the mine by reason of his failure to make the December payment. In fact, plaintiff concedes that Sullivan forfeited his interest in the mine by failing to make the payment when he claims for Baum a half interest in the property. Furthermore, the trial court found in finding IX (Tr. p. 49) that prior to the sale of the property by Kleinschmidt to Frank Llewellyn "the interest of J. W. Sullivan had been eliminated." If it is conceded, as it must be, that Sullivan forfeited his interest in the property by reason of failing to make his payment when due, by parity of reason it must also follow that Baum forfeited his interest in the property by his failure to make the payment when due for the forfeiture of the interest of both occurred by reason of the same provision in the same agreement.

(b) Baum never conveyed any interest in the mine to Kleinschmidt; consequently there was no fraudulent conveyance, the assignment and the quitclaim deed being merely evidence of the forfeiture and an attempt to clear the record title to the mine.

It was argued below and it will undoubtedly be argued here that the fraud of Baum and Kleinschmidt is shown by the instrument dated September 23, 1931, and denominated an assignment, and the quitclaim deed dated February 29, 1932. Plaintiff argued that Baum by the assignment conveyed his interest in the premises to Kleinschmidt within four months of his adjudication in bankruptcy and reaffirmed this conveyance by the quitclaim deed executed in February of the next year.

But it is clear that Kleinschmidt never received any interest in the premises by virtue of these instruments.

At the time the assignment was executed, Baum had already forfeited his interest by his failure to make the payment due on September 15, 1931. At most it was only evidence of the forfeiture which had already occurred. It was not prepared by the attorney who was acting for Kleinschmidt in matters regarding the mine at that time (Tr. pp. 134, 137-138). It was quite obviously patterned after the assignments which Sullivan originally gave to Baum and Kleinschmidt.

When Kleinschmidt's attorney learned of the existence of this instrument and examined it he thought it was ambiguous (Tr. p. 134):

> "I felt that Mr. Kleinschmidt's preparation of this assignment was ambiguous and I advised him it would not clear the title properly and I suggested that Mr. Kleinschmidt make a quitclaim."

The reason he felt that the assignment was ambiguous is obvious. It provided for the conveyance of a 26⅔% interest in the property, whereas each of the three had a one-third interest in the mine itself, but only a 26⅔% interest in the profits to be derived from the operation or sale of it. The most, therefore, at the time that Baum could convey, was a dry legal title to the property. This was not only his right to do but also his duty. The rule is thus stated in 27 Corpus Juris, pp. 433-434:

> "If a debtor holds the bare legal title to property for another and has no beneficial interest therein, it cannot, in the absence of elements of estoppel, be reached and subjected to the payment of his debts, and, therefore, a conveyance thereof by him to the equitable owner, or to a third person at the request

> of the equitable owner, is not fraudulent as against his creditors. *Moreover, he not only has the right but is under the legal duty to convey the property to the equitable owner''* (italics ours).

Cases supporting these legal principles are numerous. Typical is *Schreyer v. Scott,* 134 U. S. 405, where the court held that when real property is acquired by a husband in his own name by the use of the separate property of his wife, a subsequent conveyance of the property by the husband to the wife is not a conveyance of which his creditors can complain, as it was but the transfer of the legal title to the equitable owner.

Another typical case is *Martin v. Thomas,* 74 Or. 206, 144 Pac. 684, wherein the court reversed judgment for the plaintiff in a suit to set aside an alleged fraudulent conveyance. The suit was brought by a creditor of Lillie E. Kletzing and the court found (p. 688):

> ''The evidence shows that Ralph H. Kletzing paid in money and assets belonging to him the $1,100 when the written contract for the purchase of lot 9 of block 10 of Scott's addition to Eugene was executed, and that he made thereafter the monthly payments that were made, and that Lillie E. Kletzing never paid anything toward the purchase price of said property, and both parties understood that the beneficial interest in said property was in him and not in his mother. We conclude that prior to the making of the said quitclaim deed and the assignment of said contract to Ralph H. Kletzing, his mother was a naked trustee of said property, and that the whole beneficial interest therein was vested in her son Ralph. As Lillie E. Kletzing was only a naked trustee of said real prop-

> erty for the benefit of her son Ralph, who was the sole beneficial owner thereof, it could not have been reached by her creditors and subjected to the payment of her debts while she so held it."

In *Williams v. Levy* (9th C.C.A.), 54 F. (2d) 18, this court considered an order of a referee in bankruptcy that certain real property standing of record in the bankrupt's name be sold as property of the bankrupt's estate. One Levy produced a deed from the bankrupt which the referee found was not merely a fraudulent conveyance but a forgery. The evidence was undisputed, however, that Levy and not the bankrupt had paid for the property and the bankrupt had only bare legal title. In affirming the district court's order reversing the order of the referee, this court said (p. 19):

> "The case as made by the facts is one where the bankrupt, prior to bankruptcy, took the naked legal title to property, the whole ownership of which was in appellee, with the duty upon demand of appellee to transfer the same to him. It would be strange indeed if in such a situation, where bankruptcy has intervened, the trustee of the title holder's estate could, by securing an order of a referee to that effect, wipe out all of the property rights of the owner in the land. There is not a finding, as made by the referee, which can justify the order which was reviewed by the district judge. No situation was presented or claimed as that where the purchaser of property has had title taken in the name of another person, and has knowingly allowed such person to obtain credit upon the representation that he was the true owner thereof. Neither are the rights of any innocent transferees involved. The case is so plain as that a mere statement

> of the undisputed facts answers every argument of the trustee. * * * The referee seems to have been influenced by the fact, which he found upon conflicting evidence, that the deed which appellee produced, and which purported to convey the lot from the bankrupt to the appellee, was not genuine and that the bankrupt had not signed it. But what possible difference could that fact make in the determination of the right of appellee to have the lot, which was by all the evidence admittedly his, reserved to him?''

In the case now before the court, Baum contributed only $1,666.65 of the $21,800 purchase price of the mine. Such interest in the property as Baum may have been entitled to by reason of this contribution, and it was certainly not an undivided one-half interest, he forfeited by his failure to share with his co-contractors the burden of the purchase contract. After his forfeiture all Baum had was the naked record title to an undivided one-third interest by reason of the recording of the agreement of April 24, 1931. That instrument provided that as a condition to being reimbursed for money advanced out of profits of the mine the defaulting party should execute and deliver ''a good and sufficient deed conveying said property * * * to the other two parties'' (Tr. p. 85).

It is submitted that whether the assignment and quitclaim deed given by Baum to Kleinschmidt were valid, invalid, void, voidable, fraudulent or forged is of no importance here. As this court said in the *Williams* case ''what possible difference could that fact make'' when the property was by all the evidence admittedly Kleinschmidt's. It is further submitted that if for any reason such assignment and quitclaim deed are invalid or insuf-

ficient, it is the legal duty of Baum and his trustee in bankruptcy to execute a good and sufficient deed to appellant under the agreement of April 24, 1931, and under the authorities above cited.

II.

THE ONLY RIGHT REMAINING TO BAUM AFTER HIS DEFAULT AND FORFEITURE OF SEPTEMBER 15, 1931, WAS THE RIGHT TO BE REIMBURSED UPON CERTAIN CONDITIONS FOR THE MONEY HE HAD ADVANCED AND HIS TRUSTEE IN BANKRUPTCY CAN RECOVER NO MORE THAN SUCH A SUM, TO WIT, $2,200.

ASSIGNMENT OF ERRORS.

IX. The District Court erred in denying the motion of this defendant to dismiss the bill of complaint as against her on the ground that the same was not supported and was contrary to the evidence adduced herein, to the denial of which motion timely exception was noted by said defendant.

X. The District Court erred in making said decree and judgment in the amount of $10,880 instead of the sum of $2,200.

The forfeiture provision in the agreement of April 24, 1931, quoted under paragraph I (a) of this argument, provided that after default and forfeiture:

> "* * * in the event of sale of said Camp Rock Placer Mine, said defaulting party shall be paid at the rate of twenty six and two-thirds (26⅔) per cent of the payment made under said sale until he has received an amount equal to the amount of money which he has supplied under this agreement."

This provision to pay out of proceeds did not reserve to or give Baum any interest in the mining property (*Miller v. Lerdo Land Co.*, 186 Cal. 1, 6).

Baum testified that he realized he had a conditional right under this provision to recover his contributions, but he did not include it in his schedule of assets because the possibility of realizing anything at the time seemed so remote he thought the right valueless (Tr. pp. 148-149). That he did or did not include the right in his schedule or why he did not is not the concern of this appellant. Neither the assignment of September 23, 1931 (Deft. Ex. "B"), the quitclaim deed of February 29, 1932 (Plff. Ex. 11), nor any other conveyance, oral or written, proved at the trial, purport to convey or release this right to Kleinschmidt.

The undisputed evidence at the trial was that Baum contributed five payments of $333.33 or $1,666.65 and no more before or after adjudication in bankruptcy. Baum, and hence the plaintiff, is, under any theory, entitled to no more than $1,666.65.[3]

Even admitting that by some arrangement not shown by the evidence, Baum did convey this right to Kleinschmidt, and fraudulently, Baum's trustee in bankruptcy can recover from this defendant no more than said sum of $1,666.65.

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3. Assignment of Error X (Tr. p. 184) states the district court erred in making the decree in the amount of $10,880 instead of the sum of $2,200. The latter figure was used by counsel when the assignment of errors was prepared due to the fact that at the time of the preparation of the assignment of errors the reporter's transcript had not been completed, and counsel could not find out the exact amount of Baum's contributions. The amount of $2,200 was therefore inserted in the assignment of errors instead of $1,666.65.

In *Ackerman v. Merle,* 137 Cal. 169, 69 Pac. 983, an action to set aside fraudulent conveyances, the California court held (p. 171):

> "The creditors were entitled to subject to the payment of their claims only the property fraudulently conveyed. * * * Their [creditors'] rights in the property are not enlarged or extended by the fraudulent transfer. They can get nothing for the mere sake of punishing the fraudulent grantee, and are entitled in equity only to have such interest in the property applied to the satisfaction of their claims as has been fraudulently conveyed away."

To like effect is *Abbey v. Zimmerman,* 12 Cal. App. (2d) 311, 55 P. (2d) 903.

It should be noted that Baum's right to reimbursement was only a contingent right at the date of his adjudication. Fully ripened, the right entitled Baum or his successor to no more than $1,666.65, and the conditions upon which it did ripen did not occur until after his adjudication. Even limiting the plaintiff's recovery to this sum is to give him full benefit of any increase in the value of the right by reason of facts occurring subsequent to the adjudication.

III.

THE COURT'S FINDINGS THAT KLEINSCHMIDT DELIVERED TO BAUM THE INSTRUMENT DATED NOVEMBER 15, 1932, BY WHICH HE AGREED TO PAY BAUM $10,880 OUT OF THE PROCEEDS OF THE SALE OF CAMP ROCK PLACER MINE, PURSUANT TO AN AGREEMENT TO DEFRAUD BAUM'S CREDITORS AND TO RETURN TO BAUM HIS INTEREST IN THE MINE, ARE NOT SUPPORTED BY THE EVIDENCE; THE EVIDENCE SHOWED THIS INSTRUMENT WAS DELIVERED IN CONSIDERATION OF SERVICES RENDERED BY BAUM AFTER HIS ADJUDICATION IN BANKRUPTCY.

ASSIGNMENT OF ERRORS.

IV. The District Court erred in the making of the following findings of fact which were adopted by it in the making of its decree and judgment, to wit:

(e) " * * * * * * *

The court finds that on the 15th day of November, 1932, Walter Granger Kleinschmidt made, executed and delivered to B. F. Baum an assignment in writing wherein and whereby said Walter Granger Kleinschmidt agreed to pay to Benjamin F. Baum fifty per cent of the amount of moneys received by him from the sale or lease of the Camp Rock Mining properties. The court finds that Walter Granger Kleinschmidt received a total of Forty-nine Thousand Dollars from the sale of said Camp Rock Mining properties. The court finds that the said conveyance and assignment was made by Walter Granger Kleinschmidt after Benjamin F. Baum had obtained his discharge in bankruptcy from this court in the matter of the bankruptcy proceedings of Benjamin F. Baum and after he had freed himself from the obligations to his, Benjamin F. Baum's creditors, and the said conveyance was made in compliance with, pursuant to and in accordance with the

original agreement made between Walter Granger Kleinschmidt and Benjamin F. Baum respecting the return to Benjamin F. Baum of his interests in the Camp Rock Mining property.''

(f) '' * * * * * * *

That the amount agreed to be paid, therefore, by Walter Granger Kleinschmidt to B. F. Baum is one-half of Twenty-one Thousand, Seven Hundred Sixty Dollars ($21,760.00), or the sum of $10,880.00.

The court finds that none of said sum has been paid by Walter Granger Kleinschmidt, nor by the Estate of Walter Granger Kleinschmidt, nor by Margaret D. Kleinschmidt as Administratrix of the estate of Walter Granger Kleinschmidt, to the plaintiff, nor to the Estate of Benjamin F. Baum, a bankrupt, and all thereof is due, owing and unpaid, and that there exist no credits, nor offsets, to which the defendants or any of them are or ought to be entitled.''

IX. The District Court erred in denying the motion of this defendant to dismiss the bill of complaint as against her on the ground that the same was not supported and was contrary to the evidence adduced herein, to the denial of which motion timely exception was noted by said defendant.

(a) The court's finding that the instrument of November 15, 1932, was delivered pursuant to an agreement to return to Baum his interest in the mine is contradicted by the only evidence on the point.

As early as July, 1931, within three months of the time Baum, Kleinschmidt and Sullivan first became interested

in Camp Rock Placer Mine, Baum attempted to find purchasers of the mine so the property might be resold to the profit of the joint adventurers (Tr. p. 152).

When the parties first entered into the joint venture in April, 1931, Kleinschmidt was auditor for the Southern California Telephone Company and was employed and resided in Los Angeles, where all the dealings with regard to the mine and the facts disclosed by the evidence at the trial took place. In May, 1931, Kleinschmidt was transferred to San Francisco where he thereafter served as treasurer of The Pacific Telephone and Telegraph Company. When he left Los Angeles he asked Baum to look after his interest in the mine (Tr. p. 151).

After Baum had defaulted on September 15, 1931, in his contract with Kleinschmidt and Sullivan, and had forfeited his interest in the mine and in the venture, except for his right to be reimbursed out of profits of resale, he continued with his efforts to sell the mine. He told Kleinschmidt he wanted $5,000 cash in payment for his services if he obtained a cash buyer for the mine. Kleinschmidt said he would make a satisfactory agreement compensating Baum but no definite agreement was then made (Tr. pp. 156-157).

Three months after Baum had defaulted, Sullivan likewise defaulted and forfeited his interest in the mine. This left Kleinschmidt alone to carry the burden of the purchase contract, and he alone had to advance $1,000 each month to prevent forfeiture of the property and the investment already made. This was more than Kleinschmidt had originally bargained for and he was naturally hard pressed. On at least two occasions he had to arrange

loans to meet the payments (Tr. p. 132). Even before Sullivan's default, in November, 1931, when he was advancing but two thirds of the $1,000 payments, Kleinschmidt told Baum the mine would have to be resold or it would be lost (Tr. p. 160).

Finally in May, 1932, after several tentative sales agreements arranged by Baum had fallen through, Kleinschmidt concluded a contract to resell the mine to one Llewellyn, a purchaser obtained by Baum (Tr. pp. 102-107). The sale price was $49,000, paid $1,000 upon execution of the agreement and the balance in certain monthly installments of a minimum of $1,000. The first payments by Llewellyn had to be used by Kleinschmidt to meet the $1,000 monthly payments he was required to make to the original mine owners. Although Baum had saved Kleinschmidt's investment by obtaining a purchaser, and although Baum, having been stripped of assets by the bankruptcy proceeding, was in need of money, it was not then possible for Kleinschmidt to pay Baum the $5,000 commission he had requested except out of his own funds which at that time appear to have been depleted.

Six months later, on November 15, 1932, Kleinschmidt came to Los Angeles and gave Baum, in lieu of cash, an instrument by which he granted and assigned to Baum fifty per cent of the money to be received from the resale of the mine after certain payments and deductions. The court found that under this instrument Kleinschmidt had agreed to pay to Baum one-half of $21,760, or the sum of $10,880 (Tr. p. 45). The court also found that this sum represented the proceeds of Baum's interest in the mine, an interest fraudulently conveyed to Kleinschmidt, and that the plaintiff, Baum's trustee in bankruptcy, was

entitled to collect the sum from Kleinschmidt's estate. It is submitted that such findings can be supported by only the vaguest assumptions after the rejection of all the evidence in the case on the point.

From the date of his adjudication until the sale of the mine Baum had been engaged in an effort to obtain a purchaser. During this period Baum also performed other minor services in connection with the mine. After all this, Kleinschmidt in effect agreed to pay Baum $10,880. The instrument itself (Tr. pp. 68-69) recites only a formal consideration, and in some respects is not entirely clear as to the intention. Baum testified this instrument was executed and delivered to him to compensate him for services rendered Kleinschmidt in looking after his interest in the mine and obtaining a purchaser, services rendered after Baum's adjudication in bankruptcy. Baum's testimony was the only direct evidence on the consideration for the instrument. Kleinschmidt, being deceased, is, of course, not now available to explain his actions. If Baum's testimony is rejected there is practically no testimony interpreting these transactions.

In *Schreyer v. Scott,* 134 U. S. 405, an action like this to recover for alleged fraudulent conveyances, and where, as here, there was the testimony of but one witness to interpret the transactions, the supreme court said (p. 416):

> "It is objected by the appellees that Schreyer's testimony is not to be depended upon, because contradictory, confused and uncertain; that there is no definiteness in it as to amounts and dates; and that wrong in the transactions is evident, because the moneys received for rent after the conveyances, were deposited by Schreyer in his own name in bank, and

were obviously managed and handled by him as his own, as no accounts were kept between husband and wife of their separate moneys, but all were mingled in one fund, in his hands. But does all this indicate fraud? *If his testimony is worthless and to be rejected, then there is practically no testimony interpreting those transactions, and the court never presumes fraud.* The very confusion and carelessness in the dealings between husband and wife make against rather than in favor of the claim of fraud" (italics ours).

(b) There is not only no evidence of fraud in this case but the facts shown by the evidence are consistent only with a course of lawful, fair and honest dealing.

The only circumstance shown by the evidence which was somewhat unusual was the size of the compensation Kleinschmidt agreed, by delivery of the instrument dated November 15, 1932 (Plff. Ex. 12), to pay Baum, i. e., the sum of $10,880 found by the court. As already noted, Baum testified the instrument was given for services rendered Kleinschmidt after his adjudication and especially for obtaining a purchaser of the mine. His is the only testimony interpreting these transactions.

We believe the rule to be well settled that where the facts proved are consistent with an honest intent, the proof of fraud is wanting.

In *Foster v. M'Alester* (8th C.C.A., 1902), 114 Fed. 145, it is said (p. 153):

"The transaction between the plaintiffs and Terrell & Co. which is assailed was perfectly consistent with honesty and good intentions, and, in the absence of proof to the contrary, the law presumes it was of that character. Mere suspicion, unsupported by evidence, cannot be allowed to deprive a creditor of his legal

> rights; and fraud cannot be inferred either by the court or jury from acts legal in themselves, and consistent with an honest purpose. The settled rule on this subject is that slight circumstances, or circumstances of an equivocal tendency, or circumstances of mere suspicion, leading to no certain results, are not sufficient to establish fraud. They must not be, when taken together and aggregated,—when interlinked and put in proper relation to each other,—consistent with an honest intent. If they are, the proof of fraud is wanting. Bank v. Frank, 63 Ark. 16, 37 S.W. 400, 58 Am. St. Rep. 65; Shultz v. Hoagland, 85 N.Y. 464."

If $10,880 is too much to pay for selling mining property worth $50,000, can it be inferred therefrom that Kleinschmidt was anything but generous? Kleinschmidt is not here to say why he agreed to pay that sum. Possibly he had in mind the fact that if Baum had not obtained a purchaser when he did, he, Kleinschmidt, might have lost everything he had invested because of his inability to meet the monthly installments alone. Possibly he had in mind the fact that Baum had asked for $5,000 cash for arranging the sale, but because the purchaser was not a cash purchaser and Kleinschmidt's own funds were depleted, he could not pay what Baum asked, although Baum was in urgent need of money. Instead he promised to pay twice as much in installments at a future date. Possibly he had in mind the fact that Baum, his business associate and friend, had recently lost all his property through bankruptcy proceedings.

If we are to reject the testimony of Baum, and determine this case wholly upon inference and assumptions, upon what theory can the judgment herein be supported? If the instrument of November 15, 1932, was not given to

Baum for selling the mine and otherwise looking after Kleinschmidt's interest while he was away in another part of the state, for what was it given? Did Kleinschmidt pay $10,880 for the quitclaim deed of February 27, 1932, or the assignment of September 23, 1931, when Baum was legally bound to execute a good and sufficient deed to clear title to the property? Did Kleinschmidt agree to pay $10,880 out of the proceeds of the mine, so he would not have to pay $1,666.65 out of the proceeds of the mine in reimbursing Baum for the money advanced? Did Kleinschmidt agree to pay Baum $10,880 to default by refraining from advancing more money on the purchase contract when Baum was on the verge of bankruptcy and so that he, Kleinschmidt, could meet the payments alone, although he himself was hard pressed financially? All of these propositions assume that Baum's services in selling the mine, rendered after his adjudication in bankruptcy, were of no value and that Kleinschmidt agred to pay Baum $10,880 for nothing.

It is submitted that the only logical explanation of the acts of the parties is that given by Baum in his testimony at the trial. It is further submitted that even if Baum had not been available to interpret these transactions, the same conclusion would have to be reached. Baum's explanation is the only explanation which can logically be deduced from the acts themselves and is the only explanation consistent with probability and common sense.

Generosity today may be a suspicious circumstance, but is it alone sufficient to support a finding of fraud when the acts shown by the evidence are, as the court said in the *Foster* case, "legal in themselves and consistent with an honest purpose"?

(c) **Baum's trustee in bankruptcy is not entitled to Baum's earnings after his adjudication in bankruptcy nor the compensation Kleinschmidt agreed to pay Baum for services rendered after Baum's adjudication in bankruptcy.**

By delivery to Baum of the instrument dated November 15, 1932, Kleinschmidt agreed to pay Baum for services he rendered Kleinschmidt for looking after his, Kleinschmidt's, interest and in obtaining a purchaser for the mine. All of the services were rendered by Baum after his adjudication in bankruptcy, and Baum's trustee in bankruptcy is entitled to no part of the compensation Kleinschmidt agreed to pay for such services.

Remington on Bankruptcy, Volume 4, says:

> "§ 1395. *Property Acquired by Bankrupt after Adjudication.*—Property acquired after adjudication does not pass to the trustee at all, but belongs to the debtor's new estate, and is subject only to the claim of new creditors."

To the same effect is 7 Corpus Juris, page 132.

In *Progressive Building & Loan Co. v. Hall* (4th C.C.A., 1914), 220 Fed. 45, the court held (p. 48):

> "* * * wages earned subsequent to the adjudication cannot be treated as part of the bankrupt's estate."

In *Equitable Life Assur. Soc. of The United States v. Stewart* (W.D. S.C., 1935), 12 F. Supp. 186, it was held that a trustee in bankruptcy was not entitled to salary of a bankrupt which was not closely related to services prior to bankruptcy but was closely related to services rendered since adjudication and to future services, and dependent upon contingencies for its existence.

Even where a contract for services is entered into before adjudication, if the services are not rendered until after

adjudication in bankruptcy, the compensation earned is no part of the bankrupt estate (*In re Seiffert* (D. C. Mont., 1926), 18 F. (2d) 444).

CONCLUSION.

It is respectfully submitted that the judgment and decree of the district court should be reversed by reason of the insufficiency of the evidence to support the findings necessary to establish a fraudulent conveyance, and that the district court be directed to enter a judgment and decree in favor of this appellant, or that the judgment and decree of the district court should be reversed and the district court directed to enter a judgment and decree in favor of the plaintiff and appellee for a sum not in excess of $2,200.

Dated, San Francisco,
October 20, 1937.

Respectfully submitted,
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